



General Assembly

January Session, 2011

***Raised Bill No. 1214***

LCO No. 4900

\*04900\_\_\_\_\_FIN\*

Referred to Committee on Finance, Revenue and Bonding

Introduced by:  
(FIN)

***AN ACT CONCERNING REVISIONS TO THE NONRESIDENT  
CONTRACTOR BOND STATUTE.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subdivision (7) of section 12-430 of the general statutes is  
2 repealed and the following is substituted in lieu thereof (*Effective*  
3 *October 1, 2011*):

4 [(A) As used in this section, (i) "nonresident contractor" means a  
5 contractor who does not maintain a regular place of business in this  
6 state; (ii) "regular place of business" means any bona fide office,  
7 factory, warehouse or other space in this state at which a  
8 contractor is doing business in its own name in a regular and  
9 systematic manner, and which place is continuously maintained,  
10 occupied, and used by the contractor in carrying on its business  
11 through its employees regularly in attendance to carry on the  
12 contractor's business in the contractor's own name, except that  
13 "regular place of business" does not include a place of business for a  
14 statutory agent for service of process, or a temporary office or  
15 location used by the contractor only for the duration of the contract,  
16 whether or not at the site of construction, or an office maintained,

17 occupied and used by a person affiliated with the contractor; (iii)  
18 "contract price" means the total contract price, including deposits,  
19 amounts held as retainage, costs for any change orders, or charges for  
20 add-ons; and (iv) "person doing business with a nonresident  
21 contractor" does not include an owner or tenant of real property used  
22 exclusively for residential purposes and consisting of three or fewer  
23 dwelling units, in one of which the owner or tenant resides, provided  
24 each nonresident contractor doing business with such owner or  
25 tenant shall be required to comply with the bond requirements under  
26 subparagraph (F) of this subdivision.

27 (B) Any person doing business with a nonresident contractor and  
28 making payments of the contract price to such nonresident contractor  
29 shall deduct and withhold from such payments an amount of five per  
30 cent of such payments, unless such nonresident contractor has  
31 furnished a certificate of compliance as described in subparagraph (E)  
32 of this subdivision. The amounts so required to be deducted and  
33 withheld shall be paid over to the commissioner by the last day of the  
34 month following the calendar quarter following the calendar quarter in  
35 which the first payment to the nonresident contractor is made, and  
36 every calendar quarter thereafter. Each such payment to the  
37 commissioner shall be accompanied by a form prescribed by the  
38 commissioner. The amount required to be deducted and withheld  
39 from the nonresident contractor, when so deducted and withheld, shall  
40 be held to be a special fund in trust for the state. No nonresident  
41 contractor shall have any right of action against a person deducting  
42 and withholding under this subdivision with respect to any moneys  
43 deducted and withheld and paid over to the commissioner in  
44 compliance with or intended compliance with this subdivision.

45 (C) A nonresident contractor shall request, in writing, that the  
46 Commissioner of Revenue Services audit the records of such  
47 contractor for a project for which amounts were deducted and  
48 withheld from such contractor under subparagraph (B) of this  
49 subdivision. If such request is not made within three years after the

50 date the final payment of such amounts was made to the  
51 commissioner, such contractor waives the right to request such audit  
52 and claim a refund of such amounts. The commissioner shall, after  
53 receipt of such request, conduct an audit and issue to the nonresident  
54 contractor a certificate of no tax due or a certificate of tax due from  
55 the nonresident contractor. Not later than ninety days after the  
56 issuance of a certificate of no tax due, the commissioner shall  
57 return to the nonresident contractor the amounts deducted and  
58 withheld from such contractor and paid over to the commissioner.  
59 Upon issuance of a certificate of taxes due, the commissioner may  
60 return to the nonresident contractor the amount by which the  
61 amounts deducted and withheld and paid over to the  
62 commissioner under subparagraph (B) of this subdivision exceed  
63 the amount of taxes set forth in the certificate, together with the  
64 interest and penalties then assessed.

65 (D) When a person doing business with the nonresident contractor  
66 pays over to the Commissioner of Revenue Services amounts deducted  
67 and withheld pursuant to subparagraph (B) of this subdivision, such  
68 person shall not be liable for any claim of the nonresident contractor  
69 for such amounts or for any claim of the commissioner for any taxes  
70 of the nonresident contractor arising from the activities of the  
71 nonresident contractor on the project for which the amounts were  
72 paid over. Such payment shall not relieve the person doing business  
73 with the nonresident contractor of such person's liability for use  
74 taxes due on purchases of services from such nonresident contractor.

75 (E) When a nonresident contractor enters into a contract with the  
76 state, said contractor shall provide the Labor Department with  
77 evidence demonstrating compliance with the provisions of chapters  
78 567 and 568, the prevailing wage requirements of chapter 557 and any  
79 other provisions of the general statutes related to conditions of  
80 employment.

81 (F) Not later than one hundred twenty days after the

82 commencement of the contract, or thirty days after the completion of  
83 the contract, whichever is earlier, a nonresident contractor may (i)  
84 furnish a guarantee bond in a sum equivalent to five per cent of the  
85 contract price, or (ii) deposit with the commissioner a cash bond in a  
86 sum equal to five per cent of the contract price, in lieu of the  
87 requirements contained in subparagraph (B) of this subdivision. The  
88 commissioner may accept such bond on such terms and conditions as  
89 the commissioner may require, and upon acceptance of such bond,  
90 shall issue a certificate of compliance to the contractor. The provisions  
91 of subparagraph (C) of this subdivision shall apply to such bond, upon  
92 completion of the contract, in the same manner as such provisions  
93 apply to amounts paid over under subparagraph (B) of this  
94 subdivision.

95 (G) Upon the furnishing of a certificate of compliance by the  
96 nonresident contractor to the person doing business with a  
97 nonresident contractor, such person shall not be liable for any claim of  
98 the commissioner for any taxes of the nonresident contractor arising  
99 from the activities of such contractor on the project for which the bond  
100 was provided. Such certificate of compliance shall not relieve the  
101 person doing business with the nonresident contractor of such person's  
102 liability for use taxes due on purchases of services from such  
103 nonresident contractor.

104 (H) If any person doing business with a nonresident contractor fails  
105 to deduct and withhold and pay over to the commissioner amounts  
106 under subparagraph (B) of this subdivision, or fails to obtain a  
107 certificate of compliance from the nonresident contractor pursuant to  
108 subparagraph (G) of this subdivision, such person shall be personally  
109 liable for payment of any taxes of the nonresident contractor arising  
110 from the activities of such contractor on the project for which such  
111 amounts or certificate were required.]

112 (7) (A) As used in this subdivision:

113 (i) "Nonresident contractor" means a contractor or subcontractor

114 who does not maintain a regular place of business in this state;

115 (ii) "Resident contractor" means a contractor or subcontractor who  
116 maintains a regular place of business in this state;

117 (iii) "Verified contractor" means a nonresident contractor or  
118 subcontractor (I) who is registered for all applicable taxes with the  
119 department, (II) who has filed all required tax returns with the  
120 department, (III) who has no outstanding tax liabilities to the  
121 department, and (IV) who is treated as a verified contractor by the  
122 commissioner pursuant to subparagraph (H) of this subdivision and  
123 whose status as such is verified by the commissioner pursuant to  
124 subparagraph (I) of this subdivision;

125 (iv) "Unverified contractor" means a nonresident contractor or  
126 subcontractor who is not a verified contractor;

127 (v) "Subcontractor" means a person who is engaged in contracting  
128 real property work and who contracts with a prime or general  
129 contractor to perform all or any part of the contract of the prime or  
130 general contractor, or who contracts with a subcontractor who has  
131 contracted to perform any part of the contract entered into by the  
132 prime or general contractor;

133 (vi) "Prime or general contractor" includes (I) any person who  
134 contracts with the owner, lessee or other person having authority to  
135 enter into a contract involving the premises or property that is the  
136 subject matter of the contract, to perform services or furnish materials,  
137 or both, for the construction, alteration or improvement of any real  
138 property or project, or (II) any person who owns or leases real estate  
139 for the purpose of developing the real estate other than for his or her  
140 own occupancy, and who, in the development of the real estate,  
141 contracts, alters or makes improvements on it;

142 (vii) "Regular place of business" means any bona fide office, factory,  
143 warehouse or other space in this state at which a contractor is doing

144 business in its own name in a regular and systematic manner, and  
145 which place is continuously maintained, occupied and used by the  
146 contractor in carrying on its business through its employees regularly  
147 in attendance to carry on the contractor's business in the contractor's  
148 own name, except that "regular place of business" does not include a  
149 place of business for a statutory agent for service of process, or a  
150 temporary office or location used by the contractor only for the  
151 duration of the contract, whether or not at the site of construction, or  
152 an office maintained, occupied and used by a person affiliated with the  
153 contractor;

154 (viii) "Contract price" means the total contract price, including  
155 deposits, amounts held as retainage, costs for any change orders or  
156 charges for add-ons;

157 (ix) "Person doing business with an unverified contractor" does not  
158 include an owner or tenant of real property used exclusively for  
159 residential purposes and consisting of three or fewer dwelling units, in  
160 one of which the owner or tenant resides;

161 (x) "Commissioner" means the Commissioner of Revenue Services;

162 (xi) "Department" means the Department of Revenue Services; and

163 (xii) "Certificate of compliance" means a certificate issued to an  
164 unverified subcontractor by the commissioner, exonerating such  
165 subcontractor from sales or use taxes owed by such subcontractor  
166 under this chapter and any income tax withholding owed by such  
167 subcontractor pursuant to chapter 229, but only to the extent that such  
168 taxes arise from the activities of such subcontractor on the project for  
169 which such certificate was required.

170 (B) Any person doing business with a prime or general contractor  
171 who is an unverified contractor shall obtain proof that such contractor  
172 has posted with the commissioner a good and valid bond with a surety  
173 company authorized to do business in this state in an amount equal to

174 five per cent of the contract price, to secure the payment of any sums  
175 due under this chapter either from such contractor or from any  
176 subcontractor who enters into a contract with such contractor or any  
177 subcontractor thereto to perform any part of the contract entered into  
178 by such contractor or subcontractor thereto.

179 (C) (i) Every prime or general contractor who is an unverified  
180 contractor shall post with the commissioner a good and valid bond  
181 with a surety company authorized to do business in this state in an  
182 amount equal to five per cent of the contract price, to secure the  
183 payment of any sums due under this chapter either from such  
184 contractor or from any subcontractor who enters into a contract with  
185 such contractor to perform any part of the contract entered into by  
186 such contractor. The commissioner shall release such contractor from  
187 its obligations under such bond if it has been established, to the  
188 commissioner's satisfaction, that such contractor has met the  
189 requirements of either clause (ii) or (iii) of this subparagraph.

190 (ii) If a prime or general contractor who is an unverified contractor  
191 establishes, to the satisfaction of the commissioner by submitting such  
192 documentation, including any forms prescribed by the commissioner,  
193 as the commissioner deems necessary, that such contractor has paid all  
194 of the taxes that it owes in connection with the contract and that its  
195 subcontractors who are unverified contractors have paid all of the  
196 taxes that they owe in connection with the contract, the commissioner  
197 shall release such contractor from its obligations under the bond.

198 (iii) (I) If a prime or general contractor who is an unverified  
199 contractor establishes, to the satisfaction of the commissioner by  
200 submitting such documentation, including any forms prescribed by the  
201 commissioner, as the commissioner deems necessary, that such  
202 contractor has paid all of the taxes that it owes in connection with the  
203 contract, has held back an amount equal to five per cent of the  
204 payments being made by such contractor in connection with the  
205 contract to its subcontractors who are unverified contractors, and has

206 complied with the provisions of either subclause (V) or (VI) of this  
207 clause, as the case may be, the commissioner shall release such  
208 contractor from its obligations under the bond.

209 (II) Every prime or general contractor who is an unverified  
210 contractor and doing business with a subcontractor who is an  
211 unverified contractor shall hold back an amount equal to five per cent  
212 of such payments otherwise required to be made to such subcontractor  
213 until such subcontractor furnishes such contractor with a certificate of  
214 compliance, as described in this clause, authorizing the full or partial  
215 release of the amount held back from such payments to such  
216 subcontractor. Such contractor shall provide written notice of the  
217 requirement to hold back to each subcontractor who is an unverified  
218 contractor not later than the time of commencement of work under the  
219 contract by such subcontractor.

220 (III) The amount required to be held back from a subcontractor who  
221 is an unverified contractor, when so held back, shall be held to be a  
222 special fund in trust for the state. No such subcontractor shall have any  
223 right of action against a prime or general contractor holding back  
224 under this clause with respect to any amount held back in compliance  
225 with or intended compliance with this clause.

226 (IV) Any subcontractor who is an unverified contractor shall, upon  
227 the completion of its work under the contract, request the  
228 commissioner, in writing, for the issuance of a certificate of compliance  
229 to such subcontractor. Such subcontractor shall submit, with such  
230 request, such documentation, including any forms prescribed by the  
231 commissioner, as the commissioner deems necessary. The  
232 commissioner shall, after receipt of such request and such required  
233 documentation, review the documentation in the context of generally  
234 accepted construction industry cost guidelines for the scope and type  
235 of construction project. Not later than one hundred twenty days after  
236 the receipt by the commissioner of the required documentation, the  
237 commissioner shall either issue a certificate of compliance authorizing



238 the full or partial release of an amount held back from payments being  
239 made to such subcontractor, or shall be deemed to have issued such  
240 certificate.

241 (V) If the commissioner issues a certificate of compliance  
242 authorizing a full release of the amount held back from a subcontractor  
243 who is an unverified contractor, the prime or general contractor  
244 holding back such amount shall pay over such amount to such  
245 subcontractor. Such contractor shall not be liable for any claim of the  
246 commissioner for any taxes of such subcontractor arising from the  
247 activities of such subcontractor on the project.

248 (VI) If the commissioner issues a certificate of compliance  
249 authorizing a partial release of the amount held back from a  
250 subcontractor who is an unverified contractor, the prime or general  
251 contractor holding back such amount shall pay over the released  
252 amount to such subcontractor and shall pay over the unreleased  
253 amount to the commissioner. When such contractor pays over to the  
254 commissioner an amount held back in accordance with this subclause,  
255 such contractor shall not be liable for any claim of such subcontractor  
256 for such amount or for any claim of the commissioner for any taxes of  
257 such subcontractor arising from the activities of such subcontractor on  
258 the project for which the amount was paid over. If the amount that  
259 such contractor is required to pay over to the commissioner is not paid  
260 over on or before the thirtieth day after the date of issuance of such  
261 certificate of compliance, such contractor shall be liable for a penalty  
262 equal to ten per cent of such amount. The amount that such contractor  
263 is required to pay over to the commissioner, and the penalty thereon,  
264 may be collected under the provisions of section 12-35.

265 (VII) The commissioner shall treat the issuance to a subcontractor  
266 who is an unverified contractor of a certificate of compliance  
267 authorizing a partial release of an amount held back in the same  
268 manner as the issuance to such subcontractor of a notice of assessment  
269 under section 12-415.

270     (VIII) The issuance to a subcontractor who is an unverified  
271     contractor of a certificate of compliance shall not preclude the  
272     commissioner, in the exercise of the commissioner's authority under  
273     this chapter, from examining the tax returns, and books and records, of  
274     such subcontractor and, if appropriate and other than in connection  
275     with the project for which the certificate of compliance was issued,  
276     from making an assessment against such subcontractor.

277     (D) (i) Every prime or general contractor who is either a resident  
278     contractor or a verified contractor and doing business with a  
279     subcontractor who is an unverified contractor shall hold back an  
280     amount equal to five per cent of such payments otherwise required to  
281     be made to such subcontractor until such subcontractor furnishes such  
282     contractor with a certificate of compliance, as described in this  
283     subparagraph, authorizing the full or partial release of the amount  
284     held back from such payments to such subcontractor. Such contractor  
285     shall provide written notice of the requirement to hold back to each  
286     subcontractor who is an unverified contractor not later than the time of  
287     commencement of work under the contract by such subcontractor.

288     (ii) The amount required to be held back from a subcontractor who  
289     is an unverified contractor, when so held back, shall be held to be a  
290     special fund in trust for the state. No such subcontractor shall have any  
291     right of action against a prime or general contractor holding back  
292     under this subparagraph with respect to any amount held back in  
293     compliance with or intended compliance with this subparagraph.

294     (iii) A subcontractor who is an unverified contractor shall, upon the  
295     completion of its work under the contract, request the commissioner,  
296     in writing, for the issuance of a certificate of compliance to such  
297     subcontractor. Such subcontractor shall submit, with such request,  
298     such documentation, including any forms prescribed by the  
299     commissioner, as the commissioner deems necessary. The  
300     commissioner shall, after receipt of such request and such required  
301     documentation, review the documentation in the context of generally

302 accepted construction industry cost guidelines for the scope and type  
303 of construction project. Not later than one hundred twenty days after  
304 the receipt by the commissioner of the required documentation, the  
305 commissioner shall either issue a certificate of compliance authorizing  
306 the full or partial release of an amount held back from payments being  
307 made to such subcontractor or shall be deemed to have issued such  
308 certificate.

309 (iv) If the commissioner issues a certificate of compliance  
310 authorizing a full release of the amount held back from a subcontractor  
311 who is an unverified contractor, the prime or general contractor  
312 holding back such amount shall pay over such amount to such  
313 subcontractor. Such contractor shall not be liable for any claim of the  
314 commissioner for any taxes of such subcontractor arising from the  
315 activities of such subcontractor on the project.

316 (v) If the commissioner issues a certificate of compliance authorizing  
317 a partial release of the amount held back from a subcontractor who is  
318 an unverified contractor, the prime or general contractor holding back  
319 such amount shall pay over the released amount to such subcontractor  
320 and shall pay over the unreleased amount to the commissioner. When  
321 such contractor pays over to the commissioner an amount held back in  
322 accordance with this clause, such contractor shall not be liable for any  
323 claim of such subcontractor for such amount or for any claim of the  
324 commissioner for any taxes of such subcontractor arising from the  
325 activities of such subcontractor on the project for which the amount  
326 was paid over. If the amount that such contractor is required to pay  
327 over to the commissioner is not paid over on or before the thirtieth day  
328 after the date of issuance of such certificate of compliance, such  
329 contractor shall be liable for a penalty equal to ten per cent of such  
330 amount. The amount that such contractor is required to pay over to the  
331 commissioner, and the penalty thereon, may be collected under the  
332 provisions of section 12-35.

333 (vi) The commissioner shall treat the issuance to a subcontractor

334 who is an unverified contractor of a certificate of compliance  
335 authorizing a partial release of an amount held back in the same  
336 manner as the issuance to such subcontractor of a notice of assessment  
337 under section 12-415.

338 (vii) The issuance to a subcontractor who is an unverified contractor  
339 of a certificate of compliance shall not preclude the commissioner, in  
340 the exercise of the commissioner's authority under this chapter, from  
341 examining the tax returns, and books and records, of such  
342 subcontractor and, if appropriate and other than in connection with  
343 the project for which the certificate of compliance was issued, from  
344 making an assessment against such subcontractor.

345 (E) When a nonresident contractor enters into a contract with the  
346 state, such contractor shall provide the Labor Department with  
347 evidence demonstrating compliance with the provisions of chapters  
348 567 and 568, the prevailing wage requirements of chapter 557 and any  
349 other provisions of the general statutes related to conditions of  
350 employment.

351 (F) (i) If any person doing business with an unverified prime or  
352 general contractor fails to comply with the provisions of this  
353 subdivision, such person shall, except as otherwise provided by clause  
354 (ii) of this subparagraph, be personally liable for payment of any taxes  
355 of the unverified contractor arising from the activities of such  
356 contractor on the project. For purposes of this clause, "taxes of the  
357 unverified contractor" means any sales or use taxes owed by the  
358 unverified contractor under this chapter and any income tax  
359 withholding owed by the unverified contractor pursuant to chapter  
360 229.

361 (ii) Except as otherwise provided in clause (iii) of this subparagraph,  
362 the personal liability of any person doing business with an unverified  
363 prime or general contractor for payment of any taxes of such  
364 unverified contractor arising from the activities of such contractor on  
365 the project shall not exceed an amount equal to five per cent of the

366 contract price required to be paid to such unverified contractor.

367 (iii) Notwithstanding the provisions of clause (ii) of this  
368 subparagraph, any person doing business with an unverified prime or  
369 general contractor shall, in addition to such person's personal liability  
370 under clause (ii) of this subparagraph, remain liable for use taxes due  
371 on purchases of services from such unverified contractor in connection  
372 with the project.

373 (G) The provisions of this subdivision shall not apply to any  
374 contract where the contract price for the entire project is less than two  
375 hundred fifty thousand dollars.

376 (H) (i) The commissioner shall treat as a verified contractor or  
377 subcontractor every nonresident contractor or subcontractor who (I)  
378 has been registered for all applicable taxes with the department for at  
379 least three years preceding the contract; and (II) has filed all required  
380 tax returns with the department and has no outstanding tax liabilities  
381 to the department.

382 (ii) The commissioner shall treat as a verified contractor or  
383 subcontractor every nonresident contractor or subcontractor not  
384 otherwise eligible to be treated as a verified contractor or  
385 subcontractor pursuant to clause (i) of this subparagraph who (I) is  
386 registered for all applicable taxes with the department; (II) has filed all  
387 required tax returns with the department and has no outstanding tax  
388 liabilities to the department; and (III) posts with the commissioner a  
389 good and valid bond with a surety company authorized to do business  
390 in this state in an amount determined by the commissioner, as  
391 provided in subdivision (1) of this section.

392 (I) Notwithstanding the provisions of section 12-15, the  
393 commissioner may verify whether or not a nonresident contractor or  
394 subcontractor is a verified contractor.

395 (J) Notwithstanding the provisions of section 12-15, the

396 commissioner may disclose, to a person doing business with a  
397 subcontractor who is an unverified contractor and otherwise required  
398 by this subdivision to hold back an amount from payments being  
399 made to such subcontractor, whether a certificate of compliance has  
400 been requested by, or issued to, such subcontractor by the  
401 commissioner, and the commissioner may disclose a copy of such  
402 certificate to such person doing business with such subcontractor.

403 (K) Notwithstanding the provisions of section 12-15, the  
404 commissioner may disclose, to a person doing business with a prime  
405 or general contractor who is an unverified contractor, whether a good  
406 and valid bond with a surety company authorized to do business in  
407 this state has been posted with the commissioner by such prime or  
408 general contractor.

409 (L) Notwithstanding the provisions of section 12-15, the  
410 commissioner may, upon request, verify whether or not any contractor  
411 or subcontractor is a resident contractor.

This act shall take effect as follows and shall amend the following sections:		
---	--	--

Section 1	<i>October 1, 2011</i>	12-430(7)
-----------	------------------------	-----------

***Statement of Purpose:***

To streamline the treatment of nonresident contractors, allowing DRS, under certain conditions, to treat such contractors as resident contractors, and to establish procedures to close out a nonresident contractor bond.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*